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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Review of the Policy Implications of the Changing Video Marketplace	)	MM Docket No. 91-221
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Federal Communications Commission
Office of the Secretary

To: The Commission

COMMENTS OF ABRY COMMUNICATIONS

ABRY Communications hereby submits its comments in response to the Commission's Notice of Inquiry in the above-captioned proceeding (FCC 91-215, released August 7, 1991).

I. Introduction

ABRY Communications is the umbrella organization for five television broadcast stations -- WNUV-TV, Baltimore, Maryland; WSTR-TV, Cincinnati, Ohio; KSMO-TV, Kansas City, Missouri; WCGV-TV, Milwaukee, Wisconsin; and WTTO-TV, Birmingham, Alabama. Each station is licensed to a different entity but they will be referred to herein collectively as ABRY stations. All five ABRY stations are independent, UHF stations; two carry programming from Fox Television.

ABRY is a relatively new entrant in the television business, created and managed by Mr. Andrew Banks and Mr. Royce Yudkoff. They formed the company in 1988 for the acquisition of WNUV-TV, Baltimore, which was completed on March 17, 1989.

All five stations were unprofitable when ABRY acquired them -- they were distressed or semi-distressed stations, some teetering on going dark. Specifically, WSTR-TV (formerly WIII) and KSMO-TV (formerly KZKC) were in Chapter 11 Bankruptcy, each for over two and one-half years, before ABRY acquired them.

After each acquisition ABRY invested very substantial sums in facilities improvements. For example, ABRY purchased an upgraded, new antenna and a new transmitter for WNUV; KSMO-TV received a new antenna; and WTTO acquired an existing tower to provide the station with a stronger, clearer signal. This month, in Cincinnati, ABRY completed the construction of a new tower and installation of a new antenna and transmitter, all of which now enable WSTR-TV, for the first time, to provide a City Grade signal capable of being received by all viewers in the Cincinnati market. These investments allow the ABRY stations to provide better over-the-air coverage to households the stations already reached and new coverage to additional households. Such investments serve the public interest by providing additional free broadcast signals for TV receivers not connected to cable TV systems, and they enable cable TV systems in outlying areas to receive WSTR-TV's signal so it can be distributed to such systems' viewers. Thus, ABRY is contributing to diversity of mass media in the areas its stations reach.

II. ABRY's Contributions to Localism in Its Markets

In addition to transmission system improvements, ABRY also has invested substantially in local origination equipment. Examples of such investments include new studios at WTTO and KSMO-TV and camera, editing and production equipment at every station.

These investments allow ABRY's stations to produce and broadcast programs such as the monthly Mayor's Show and 54 Space

Corp. at WNUV, Kids Club programming at KSMO-TV and specials about such topics as Teenage Pressures at WTTO and Drug Free Youth at WCGV. Local vignettes and PSA's produced for local groups are periodically done at all ABRY stations. ABRY stations have broadcast local events never before broadcast in their communities -- including the Fourth of July Fireworks on WNUV and a local forum on housing on WSTR-TV. The ABRY stations also have sponsored many nonbroadcast events in each of their markets, tied in with on-air support, ranging from events and programs encouraging reading to those discouraging drug use.

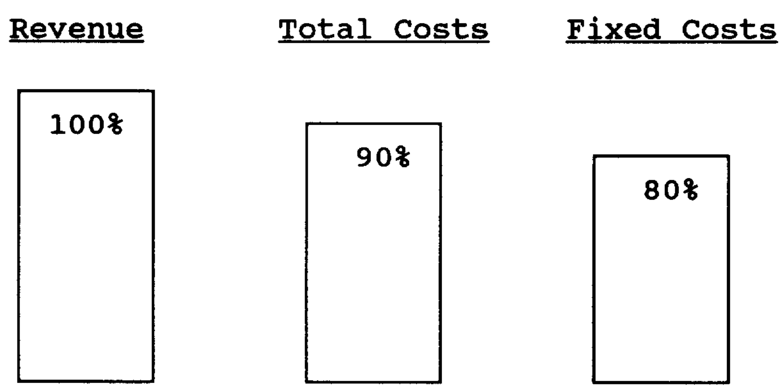
III. "What Impact Will Increased Competition Have on Local Broadcast Stations . . . and How Will This Affect Their Shares of Advertising Revenues? Will Increased Competition for Advertising Revenues Have an Impact on Their Programming, Including Local Programming?"

There is no doubt that increased fragmentation of viewership can cause erosion of advertising revenues. If advertising revenues decrease, broadcasters have to operate with tighter profit margins, or in many cases losses. One of the first expenses owners look to cut in such situations is local programming, especially public affairs programs. Recent trade press reports confirm that TV stations are cutting back on local programming because of decreased advertising revenues. Even major market, VHF, network affiliates, historically the bastion of local programming, are drastically reducing their staffs and public affairs commitments. More troubled stations are being forced to supplement part of each broadcast day with infomercial and home shopping services where entertainment or public affairs programming previously aired.

It is a given that public affairs programming does not pay its way. An example of such a public affairs program not paying its way is the Mayor's Show on WNUV, Baltimore where production costs run around $25,000 per year; such production costs cannot be recouped by a sponsorship of the program.

The basic costs of a TV broadcast station are fixed, except for the extra costs of local public affairs programs. (Regular programming normally is purchased pursuant to longterm contracts, so those costs are factored into yearly-budgeted "fixed" costs for the station.)

A hypothetical, but typical, UHF independent TV station's yearly income statement, in simple, bar-graph form, would look like this:



This demonstrates vividly how, for example, a 10 percent loss in revenues would require drastic curtailments of non-fixed costs, such as local public affairs programs, in order to avoid operating losses.

The cable TV industry is not known for a tradition of local public affairs programming. Yes, some cable TV systems carry events such as city council meetings, and maintain government access and public access channels; but in essence these services have no extra costs for cable operators because of the unregulated utility nature of their business -- cable operators simply can add such costs to their rate bases and increase their monthly subscription fees to cover them. Broadcasters' only source of revenues is advertising, which is highly competitive; cable operators receive monthly subscription fees for their monopoly service.

IV. "Which Commission Policies and Regulations, If Any, Hamper the Ability of . . . Independents to Compete With Multichannel Delivery Systems?"

Duopoly. ABRY urges that the Commission change its duopoly rule to allow common ownership of two stations in a market. The rule should be limited either to two UHF stations or one VHF and one UHF station; and to markets where there will be at least three other conventional over-the-air TV stations (including non-commercial stations) after such common ownership occurs.

The justification for such change is obvious. Cable TV, in nearly every situation, is an unregulated local monopoly -- that is, most cable systems' rates are unregulated and very few systems face competition from other cable systems (or even from other multi-channel services). As Congress and the Commission have concluded, one way to confront that situation, short of declaring cable systems utilities and regulating their rates, is effective competition. A very significant step towards effective competition would be to allow common ownership of two TV stations in markets where there are at least five conventional TV stations (including non-commercial stations).

The total cost of operating a UHF independent TV station comprises about 25 percent programming and 75 percent all other costs. The public only sees the programming -- the 25 percent element. A large portion of the other costs could be used to operate two stations (costs such as office and clerical expenses, computer and telephone, management, engineering and programming staff). This economy of scale (minor, in comparison to the per-channel economy of scale for a 50-channel cable TV system) would improve significantly the ability of over-the-air broadcasters like ABRY to remain viable and continue producing and broadcasting quality, local programs, including public affairs programs and PSA's, in such a manner as to remain "effective competition" for cable TV and provide an alternative for those who cannot afford cable TV.

There already is Commission precedent for allowing ownership of two TV stations in a market. The Commission always has permitted ownership of an AM/FM combination in a market (even in small markets where the commonly-owned AM and FM stations are the only local stations). The Commission formerly prohibited simulcasting by AM/FM combos, which at least guaranteed diversity of programming choices for listeners even in the absence of diversity of ownership. The Commission eliminated the simulcasting prohibition for AM/FM combos several years ago, but ABRY would not object to such a prohibition for commonly-owned TV stations in the same market.

There is other Commission precedent for at least partial control of two TV stations in the same market. The kinds of "local market agreements" ("LMA's") which now are prevalent in radio, and have been approved by the Commission, also take place in television. For example, press reports indicate that the owner of TV station WPGH-TV, Pittsburgh, Pennsylvania, also will be programming Pittsburgh station WPTT-TV from 3:00 PM to midnight, seven days per week.

Multiple Ownership Rules. ABRY urges that the Commission specify, when it adopts the proposal described above allowing common ownership of two TV stations, that such dual ownership will count only as one holding under the Commission's multiple ownership rules. In other words, a person or company could have attributable interests in TV stations in up to twelve markets, but could own as many as 24 stations.

Beyond this change, which really is a part of ABRY's recommendation described above under the duopoly heading, ABRY does not recommend any changes in the Commission's multiple ownership rules. The current multiple ownership rules are not a significant factor affecting the ability of TV broadcast stations to compete in a multichannel environment. Most of a station's costs are local, so having stations in more than twelve markets under common ownership does not create sufficient additional economies of scale to make such stations more competitive in their respective markets.

V. "Do [the Commission's] Ownership Rules . . . Prevent Realization of Economies of Scale and Limit Program Investment Which Might Otherwise Promote the Vitality of Local Stations?"

Very few UHF independent TV stations produce and air local newscasts, because of cost prohibitions. However, common ownership of two stations in a market would promote the creation of local news and more public affairs programs by UHF independent stations.

For example, the existing news staff of a UHF network affiliate could produce an in-depth examination of a news story or a public affairs program to be aired on a co-owned UHF independent station. Public affairs feeds off of news, yet the limited local broadcast time available on a UHF network affiliate station often results in quality in-depth news segments and public affairs programs being aired during off hours or left "on the cutting room floor."

Such programming would promote vitality of local stations without detracting in any significant way from the diversity of programming or ownership. Obviously, such programming would add to diversity of programming, perhaps even by keeping a UHF independent station on the air as a viable separate programming source or by allowing a station to avoid resorting primarily to home shopping and infomercial types of programming. With respect to diversity of ownership, the Commission should realize that, although in 1980 the three major TV networks (i.e. three owners) commanded 91 percent of TV viewership, in 1991 those three networks now have only 63 percent of viewership. Thus, there already is a great deal more diversity than there was prior to today's multi-channel environment.

Thus, the Commission's current ownership rules do prevent the realization of local economies of scale and limit the broadcast of local programming; yet, in light of today's diversity of programming available from sources other than over-the-air broadcast stations, the Commission's rules do little to add to diversity, and may well contribute to the demise of some conventional broadcast TV stations.

VI. "What are the Projections for Advertising Revenue Growth During the Next Decade? Will Local Broadcasters Experience a Net Growth or Net Loss in Advertising Revenue During this Same Period?"

The total of advertising dollars spent in the U.S. is not expanding significantly. Because of the number of new entrants in advertising-supported television (including cable TV program services), the amount of advertising revenues for over-the-air television is shrinking.

Our GNP is growing only at a rate of 1 to 3 percent per year. The number of households in the U.S. is expanding at a similar rate, as is the amount of disposable income per household. Yet television viewing per household seems to be remaining fairly static.

In other words, the total advertising pie seems to be remaining the same, but there are more diners than there ever have been. Thus, it is obvious that unless the Commission makes some significant changes in its duopoly rules, some local stations will cease broadcasting, and viewers who cannot afford cable TV, or do not have it available in their areas, will have fewer stations to watch.

VII. Conclusion

The Commission, in its Notice of Inquiry in this proceeding, has posed several questions which are critical to the future of over-the-air broadcast television in this country. ABRY has chosen to focus on the duopoly question because of ABRY's genuine belief that this is a specific area where the Commission can take action which will add to, or at least maintain, the diversity of programming available to over-the-air television viewers.

Respectfully submitted,

ABRY COMMUNICATIONS

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